

## LABOUR DEPARTMENT

The 29th November, 1984

No. 9/5/84-6 Lab/8235.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Haryana Dairy Development Coop. Fed., Ltd., Gohana Road, Milk Plant, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 41 of 1982

*between*

SHRI NARENDER KUMAR, WORKMAN AND THE MANAGEMENT OF M/S THE HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD., GOHANA ROAD, MILK PLANT, ROHTAK

*Present :*

Shri R. N. Vats, A.R., for the workman.

Shri K. L. Nagpal, A. R., for the respondent.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Narender Kumar and the management of M/s The Haryana Dairy Development Co-operative Federation Ltd., Gohana Road, Milk Plant, Rohtak, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/RTK/114/81/6465, dated 9th February, 1982:—

Whether the termination of services of Shri Narender Kumar was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent since 27th November, 1977 but his services were terminated unlawfully on 1st May, 1981 in flagrant disregard of section 25-F of the Industrial Disputes Act, 1947.

3. In the detailed reply filed by the management, the claim of the workman has been controverted *in toto*. It is pleaded that the workman had actually worked for less than 240 days with the respondent during the last 12 calendar months as laid down in section 25-(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Before the date of termination i.e. 1st May, 1981, it is alleged that the workman actually worked for only 193½ days with the respondent and as such the provisions of section 25-F of the Industrial Disputes Act, 1947 was not attracted in this case. *Inter alia*, it is pleaded that in calculating the actual working days, the period for which the workman remained on strike, should be excluded. That period is from 18th October, 1980 to 18th January, 1981. In this context, it is alleged that the strike resorted to by the work-force of the respondent was absolutely illegal, because its union leaders were engaged in negotiating some demands of the workmen with the Managing Director of the respondent but in spite of that without waiting for the outcome of the negotiation, the workman resorted to strike, though the management display a notice on 18th October, 1980 asking the workmen, to resume their duty, failing which, their services will be terminated. But the response of the workman was not responsible and as such his services were terminated on 5th November, 1980 but in spite of that, the management allowed the workman to resume his duties on 19th January, 1981 and the workman was ordered to be treated on *denovo* appointment and he was not paid wages for the period of strike. i. e. from 18th October, 1980 to 18th January, 1981. On the basis of these allegations, it is alleged that if the period of strike is excluded, the workman had not actually worked for 240 days with the respondent in the last 12 calendar months and as such he cannot avail of the benefit of the provisions of section 25-F of the said Act.

4. In the replication, filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issue was settled for decision on 26th July, 1982 :—

1. Whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled?



6. The management examined 4 witnesses, MW-1 is Shri O.P. Sahney, MW-2 is Shri R. C. Chillar, MW-3 is Shri Krishan Lal, Time Keeper, and MW-4 is Shri G. P. Mathur, General Manager of the respondent. On the other hand, the workman examined Shri O.P. Bura, General Secretary, of the Milk Plant Workers Union as WW-1 and himself as WW-2.

7. I have heard Shri S.N. Vats, learned Authorised Representative of the workman and Shri K. L. Nagpal, Legal Adviser of the respondent. My findings on the issue framed are as below :—

**Issue No 1 :**

8. The learned Authorised Representative for the workman Shri S.N. Vats vehemently contended that termination of service of the workman 'was retrenchment', within the meaning of that expression in section 2(o) of the said Act, since he did not fall in any of the 3 excepted cases mentioned in the said section and since there was 'retrenchment' it was bad for non compliance with the provisions of section 25-F of the said Act. On the other hand, the learned legal adviser of the respondent contended that since the workman had not actually worked for 240 days during the last 12 calendar months with the respondent, as is evident from the duty chart Exhibit MW-3/1 duly proved by Shri Krishan Lal, Time Keeper, MW-3, the workman cannot bank upon the provisions of section 25-F of the said Act. It is common case of the parties that there was strike in the respondent plant for the period 18-10-80 to 18-1-81. It is also not disputed by the workman that the entire labour force of the respondent was on strike during this period. It is also undisputed that wages for this period were not paid to the workman, probably they were not claimed by him. So, the learned legal adviser for the respondent contended that if the strike period is excluding while computing the number of working days, the workman has definitely worked for less than 240 days during the last 12 calendar months. If this period is included, then the workman has definitely put in more than 240 days of work with the respondent. In this very context he contended that the case of the workman falls under section 25 (b) (2) of the said Act and not under section 25(b)(1) as argued by the learned Authorised Representative for the workman. Section 25(B) (1) and 25(B) (2) can be reproduced hereunder for ready reference:—

25B. for the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months he shall be deemed to be in continuous service under an employer:—
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation:—*For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (i) he has been laid off under an agreement or permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the Industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.



9. Shri Nagpal Authorised Representative for the respondent pressed into service many grounds in support of his contention that the strike resorted to by the workmen was illegal and unjustified. He made a pointed reference to the Managing Director's letters dated 30-9-80 and 1-10-80 Ex. MW-1 and MW-2 inviting representatives of the workers union for negotiation and also requesting the workman not to resort to strike and further that no attempt was made by the workman to refer the dispute to the Labour-cum-Conciliation Officer as required under section 12 of the said Act and also that there is no evidence on record to show that the workman ever approached the Government of Haryana for referring their grievances as an Industrial dispute to the Industrial Tribunal as envisaged under section 10 of the said Act. It is further contended that since the workman did not claim his wages for the strike period, so, there is no escape from the conclusion that the workman accepted the strike period as absence from duty and further more no demand of the workman was conceded by the management after the workman had resumed his duty after strike period. On the basis of the points discussed above Shri K. L. Nagpal contended that the strike resorted to by the work-force of the respondent including the workman was illegal and unjustified and as such the period of strike should be excluded for computing the number of working days, the aggrieved workman actually worked with the respondent during the last 12 calendar months. In that behalf Shri Nagpal referred to 1979 Lab. I. C. 1079, Punjab and Haryana and AIR 1960 S. C. 902. The observations made in this authority are on peripheral points and are not exactly applicable to the controversy in hand. Firstly the strike resorted to by the work-force of the respondent was not declared illegal by the Government of Haryana. So, assuming that the strike was illegal, even than participation in an illegal strike may not necessarily and in every case be punished with dismissal without proper enquiry being held. I am fortified in making these observations from the law laid down in AIR 1961 S. C. 1158. **Bata Shoe Co. (P) Ltd. Vs. D. N. Gunguy and others.** Another authority which can be referred with advantage, was reported in AIR 1960 S. C. 219 **India General Navigation and Railway Co. Ltd. and another Vs Their workmen.** In this authority their Lordships of the Hon'ble Supreme Court observed that assuming it is open to the management to dismiss a workman who has taken part in an illegal strike, in determining the question of punishment, a clear distinction has to be drawn between those workmen, who not only joined in such strike but also took part in obstructing the loyal workmen for carrying on their work or took part in violent demonstrations. In the present case there is not an iota of evidence on record that the aggrieved workman resorted to any violence during the strike period or he in any way obstructed any loyal workmen from carrying on his work. The punishment of dismissal can be meted out after proper enquiry by the management, in case, the strike had been declared illegal. In the present case the strike resorted to by the work-force of the respondent was not declared illegal by the Government of Haryana, so, various contentions raised on behalf of the respondent are absolutely unfounded. Since the controversy in hand is being decided primarily on accepted facts, so I need not discuss the oral evidence adduced by the parties. So, I find that the aggrieved workman had put in more than 240-days actual work with the respondent on the date his services were terminated and as such his termination was in gross violation of the provisions of section 25-F of the Industrial Disputes Act, 1947, because no notice or retrenchment compensation was given to him. So, the order of termination of the workman is held to be illegal and void abinitio. The law is settled that removal of order of terminating the services of the workman must necessarily lead to reinstatement as if the order has never been and so it must ordinarily lead to back wages to. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and the workman to direct reinstatement with full back wages. It is a common knowledge that the Milk Plants in Haryana are always in the red and reason for the same may be many. All the Milk Plant in Haryana are in financial doldrums and as such i will not be equitable to award full back wages to the workman. Such a prayer was also made by the Legal Advise of the respondent during the course of arguments. So, taking in to consideration the totality of circumstances I order for the reinstatement of the workman with continuity of service and 25 per cent back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 1st October, 1984.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Endst. No. 41/82/3482, dated 8th November, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour, and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

No. 9/5/84-Lab/8236.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Om Weaving Factory, 41/4, Bahalgarh Road, Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER LABOUR COURT, ROHTAK.

Reference No. 104 of 1981

Between

SHRI RAJ KUMAR, WORKMAN AND THE MANAGEMENT OF M/S. OM WEAVING FACTORY  
41/4, BAHALGARH ROAD, SONEPAT

Present :—

Shri J. K. Jain, A.R., for the workman.

Shri R. C. Sharma, A. R., for the management.



## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Raj Kumar and the management of M/s. Om Weaving Factory, 41/4, Bahalgari Road, Sonapat, to this Court for adjudication,—vide Labour Department Gazette Notification No. ID/SPT/88/81/35889, dated 30th July, 1981 :—

Whether the termination of service of Shri Raj Kumar was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as Bailerman with the respondent on monthly wages of Rs. 300, three years ago but his services were terminated on 15th May, 1981, without any notice or payment of retrenchment compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947.

3. A detailed written statement was filed by the respondent, controverting the claim of the workman *in toto*. It is alleged that the demand notice is full of mis-representations and fabricated facts. It is alleged that the claimant alongwith others resorted to stay-in strike on 31st January, 1981, which also led to violence and other illegal actions on the part of the striking workers and the present workman was an active participant in those activities. The workman failed to report for duty in spite of repeated notices issued to him and the strike was prohibited by the Government of Haryana,—vide notification, dated 9th March, 1981 but the workman and many others failed to report for duty, resulting in complete closure of the respondent concern in the month of June, 1981 and so it is alleged that the workman was not interested in employment and left the service of his own.

4. On the pleadings of the parties, the following issue was settled for decision on 5th February, 1982:—

1. Whether the termination of service of Shri Raj Kumar was justified and in order ? If not, to what relief is he entitled ?

5. Both the parties were allowed to adduce their evidence. I have heard their learned authorised Representatives. My findings on the issue framed are as under :—

## Issue No 1

6. The management examined MW-1, Shri Suresh Kumar, Time Keeper, who stated that the premises, in which Om Weaving Factory is located, there are other three factories being run under the name and style of Jagdish and Shanker Textile and before 31st January, 1981, the workmen of this factory resorted to stay in tool down strike and pitched a tent at the gate of factory and the management tried to persuade the workers to join their duties and in that behalf notices were sent to the workmen and intimation to the Labour Department and that the strike resorted to by the workmen was prohibited by the Government of Haryana,—vide gazette notification, dated 9th March, 1981, photo copy of the gazette is Ex. M-1. But the workman failed to report for duty and so his name was truck off from the rolls of workmen on 31st March, 1981. MW-2 is Shri Manohar Lal, Supervisor, of the respondent concern. He also stated about the strike resorted to by the work force of three concerns including respondent concern and that the striking workers used to sit in dharna in front of the factory gate and used to hurl abuses at the management and also stop loyal workmen for entering the factory premises. MW-3 is Shri Prahlad Singh wrongly recorded as (M-W) He stated that he was brought reconciliation file of the present case and that strike took place in the month of January, 1981 in the respondent concern and that the workman was one of the strikers and thereafter the strike was prohibited by the Government of Haryana. The management had issued a notice to this workmen to resume their duties on or before 10th April, 1981.

7. The workman appeared as his own witness as WW-1 and stated that he was employed by the respondent three years ago on monthly wages of Rs. 300, but his services were terminated on 15th May, 1981 without any prior notice or payment of retrenchment compensation. He further stated that in the year 1981 the workmen of the respondent concern served a general demand notice but no settlement was arrived at and the demand notice was sent to the Industrial Tribunal, Faridabad, for adjudication but no enquiry was held and that he has since filed a separate action for the recovery of wages in lieu of earned leave and bonus before the Authority under the payment of Wages Act. WW-2 is Shri Jang Bahadur Yadav, who also stated about the strike in the respondent concern in the month of January, 1981 and after prohibition of the strike by the Government of Haryana, the management refused to take back certain workmen on duty including the aggrieved workman.

8. The learned authorised Representative for the management Shri R C. Sharma, forcefully contended that since the claimant did not resume his duties after prohibition of the strike by the Government of Haryana,—vide gazette notification, dated 9th March, 1981, management was justified in terminating his services under the Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules, 1969. From the said



rule a pointed reference was made to rule 20(1)(k). The said rule contains acts and omissions, which shall be taken as acts of misconduct. One of the clauses is that any workman striking work illegally shall be guilty of misconduct. Shri R.C. Sharma also placed reliance upon 1957(I) LLJ 226 Burn & CJ. Ltd. v/s. their employees. The observation made in this authority have not got the remotest bearing upon the facts of the present case. Though never pleaded by the respondent but argued by the learned authorised representative on that firstly services of the workman were terminated on 31st March, 1981 and thereafter he was allowed to resume his duties and again his services were terminated on 15th May, 1981. This plea of termination of services of the workman on 31st March, 1981 was taken by the learned representative to prove his point that after the strike was prohibited by the Government of Haryana,—vide gazette notification dated 9th March, 1981, the management was justified in terminating the services of the workman on 31st March, 1981 for wilful absence and also for misconduct as provided in the Standing Order referred to above. But there is no plea by the respondent in the reply filed in the Court that the services of the workman were terminated on 31st March, 1981. Its case is that his services terminated on 15th May, 1981. The workman has stated that he resumed his duty on 9th April, 1981, because the management had given a notice to the striking workers to resume their duties by 10th April, 1981 and as such the management was not justified in terminating his services for violating the provisions of Standing Orders referred to above. I am inclined to go with the workman on the this point. Since the workman resumed his duties on 9th April, 1981, well within the period given by the management to the striking workers to report back for duty, the management was not justified in terminating his services on 15th May, 1981 without complying with the provisions of the Industrial Disputes Act, 1947. So, in the light of the my foregoing discussion, I find that the order of termination was illegal and void abinito, because the same was passed in gross violation of the provisions of the section 25-F of the Industrial Disputes Act, 1947 and as such the same is set aside and the workman is ordered to be re-instated forthwith with continuity of service and full back wages. This reference is answered and returned accordingly. There is no order as to costs.

Dated 21st September, 1984.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak.

Endst No. 104/81/3280, dated the 1st October, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak.

No. 9/5/84-6Lab/8237.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Jagdish Weaving Factory, 41/4, Bahalgarh Road, Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 103/81

between

SHRI KANSHI RAM, WORKMAN AND THE MANAGEMENT OF M/S. JAGDISH WEAVING FACTORY, 41/4, BAHALGARH ROAD, SONEPAT.

Present :—

Shri J. K. Jain, A.R., for the workman

Shri R. C. Sharma, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Kanshi Ram and the management of M/s. Jagdish Weaving Factory, 41/4, Bahalgarh Road, Sonapat, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/SPT/90/81/35859, dated 30th July, 1981 :—

Whether the termination of service of Shri Kanshi Ram was justified and in order ? If not, to what relief is he entitled ?



2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed as Beam carrier with the respondent for the last about six years on monthly wages of Rs. 300/- and that prior to 11th March, 1981 there was strike in the factory but the Government of Haryana prohibited strike on 10th March, 1981 and referred the dispute to the Industrial Tribunal for adjudication and after 11th March 1981 the workman has been going to the respondent factory to resume his duty but he was not allowed to do so and in the process the respondent terminated the services of the workman without complying with the provisions of the Industrial Disputes Act, 1947.

3. A detailed written statement was filed by the respondent, controverting the claim of the workman in toto. It is alleged that the demand notice is full of mis-representations and fabricated facts. It is further alleged that the claimant alongwith others resorted to stay-in strike on 31st January, 1981 which also led to violence and other illegal activities on the part of the striking work force and the present workman was an active participant in those activities. The workman failed to report for duty inspite of repeated notice to him and the strike was prohibited by the Government of Haryana,—vide gazette notification dated 9th March, 1981. The aggrieved workman and many others failed to report for duty resulting in complete closure of the respondent concern in the month of June, 1981 and so, it is alleged that the workman was not interested in employment and left his services of his own.

4. On the the pleadings of the parties, the following issue was settled for decision on 5th February, 1982:—

1. Whether the termination of service of Shri Kanshi Ram was justified and in order? If not, to what relief is he entitled?

5. Both the parties were allowed to adduce their evidence. I have heard their learned Authorised Representatives. My findings on the issue framed are as under :—

#### Issue No. 1

6. The management examined MW-1, Shri Suresh Kumar, Time keeper, who stated that the premises, in which Om Weaving Factory is located, there are other three factories being run under the name and style of Jagdish and Shanker Textile and before 31st January, 1981, the workmen of this factory resorted to stay-in tool down strike and pitched a tent at the gate of the factory and the management tried to persuade the workers to join their duties and in that behalf notices were sent to the workmen and intimation to the Labour Department and that the strike resorted to by the workmen was prohibited by the Government of Haryana,—vide gazette notification dated 9th March, 1981, photo copy of the gazette is Ex. M-1. But the workman failed to report for duty and so his name was struck off from the rolls of workmen on 31st March, 1981. MW-2 is Shri Manohar Lal, Supervisor, of the respondent concern. He also stated about the strike resorted to by the work force of three concerns including respondent concern and that the striking workers used to sit in dharna in front of the factory gate and used to hurl abuses at the management and also stop loyal workmen from entering the factory premises. MW-3 is Shri Prahalad Singh (wrongly recorded as MW-2). He stated that he has brought re-conciliation file of the present case and that strike took place in the month of January, 1981 in the respondent concern and that the workman was one of the strikers and thereafter the strike was prohibited by the Government of Haryana. The management had issued a notice to this workman to resume their duties on or before 10th April, 1981.

7. The workman appeared as his own witness as WW-1 and stated that he was employed by the respondent three years ago on monthly wages of Rs. 300/- but his services were terminated on 15th May, 1981 without any prior notice or payment of retrenchment compensation. He further stated that in the year 1981 the workmen of the respondent concern served a general demand notice but no settlement was arrived at and the demand notice was sent to the Industrial Tribunal, Faridabad for adjudication but no enquiry was held and that he has since filed a separate action for the recovery of wages in lieu of earned leave and bonus before the Authority under the Payment of Wages Act. WW-2 is Shri Jang Bahadur Yadav, who also stated about the strike in the respondent concern in the month of January, 1981 and after prohibition of the strike by the Government of Haryana, the management refused to take back certain workmen on duty, including the aggrieved workman.

8. The learned Authorised Representative for the management Shri R. C. Sharma, forcefully contended that since the claimant did not resume his duties after prohibition of the strike by the Government of Haryana,—vide gazette notification dated 9th March, 1981, management was justified in terminating his services under the Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules 1969. From the said rule a pointed reference was made to rule 20 (1) (k). The said rule contains acts and omissions, which shall be taken as acts of misconduct. One of the clauses is that any workman striking work illegally shall be guilty of misconduct. Shri R.C. Sharma also placed reliance upon 1957 (I) LLJ 226 *Burn & Co. Ltd Versus their employees*. The observation made in this authority have not got the remotest bearing upon the facts of the present case as is evident from Ex. MW-2 an extract from the attendance register, the services of the workman were terminated on 31st March, 1981. This plea of termination of services of the workman on 31st March, 1981 was taken by the learned representative of the respondent to prove his point that after the strike was prohibited by the Government of Haryana,—vide gazette notification dated 9th March, 1981, the management was justified in terminating the services of the workman on 31st March, 1981 for his wilful absence and also for misconduct as provided in the Standing



Orders referred to above. The case of the workman is that after 11th March, 1981 he had been going to the respondent concern to resume his duties but he was not allowed to go inside the factory premises by the respondent. Demand notice was raised by the workman in the month of May, 1981 i.e. after a lapse of about two months. Had the workman been not taken to resume his duty with the respondent, I see no reason for him to have raised a demand notice so early. So, only inference possible is that the management did not allow the workman to resume his duty after the strike had been prohibited by the Government of Haryana on 9th March, 1981 and in the process, the respondent terminated the services of the workman in gross violation of the provisions of section 25-F of the Industrial Disputes Act, 1947. So, in the light of my foregoing discussions, I find that the order of termination was illegal and void *ab initio* and non-existent in the eyes of law and as such the workman is ordered to be reinstated with continuity of service and with full back wages. This reference is answered and returned accordingly. There is no order as to cost.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Dated 21st September, 1984.

Endst No. 104/81/3279, dated the 1st October, 1984

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

No. 9/5/84-6 Lab/8238.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of Haryana Roadways, Jind.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,  
ROHTAK

Reference No. 153 of 82.

*Between*

Shri Prithvi Singh, workman and the management of Haryana Roadways, Jind.

*Present:—*

Shri S. N. Vats, A. R. for the workman.  
Shri Mohan Dass, L. A. for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Prithvi Singh and the management of Haryana Roadways, Jind, to this Court, for adjudication, *vide* Labour Department Gazette Notification No. ID/HSR/48/82/35394, dated 29th July, 1982.

Whether the termination of service of Shri Prithvi Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were sent to the parties. The parties appeared. The workman alleged that he was appointed as helper/tyreman with the respondent on 13th September, 1979 and that his services were terminated illegally on 22nd September, 1981 without any chargesheet prior notice or payment of retrenchment compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent, in which preliminary objection taken was that the reference is liable to be dismissed as the claimant did not avail of the departmental remedy of filing an appeal to the State Transport Controller, Haryana, Chandigarh and further the reference is bad in law, because no cause of action has accrued in favour of the applicant. On merits, it is alleged that the workman was employed on 13th September, 1979 upto 30th September, 1979 and thereafter his period of employment was extended upto August, 1981. It is alleged that since the claimant was employed on daily wages, provisions of section 25-F of the Industrial Disputes Act are not attracted.

4. In the replication filed, by the workman, various pleas taken by the respondent have been controverted.

5. On the pleadings of the parties, the following issue was settled for decision on 6th May, 1983:—

Whether the termination of service of the workman was justified and in order ? If not, to what relief is he entitled ?



6. The management examined MW-1 Shri Sadhu Ram clerk and workman appeared as his own witness as WW-1.

7. I have heard Shri S. N. Vats, learned Authorised representative of the workman and Shri Mohan Dass learned Authorised Representative of the management. My findings on the issue framed are as below:—

#### Issue No. 1

8. The management examined MW-1 Shri Sadhu Ram, clerk, Haryana Roadways Jind Depot, who made a statement completely in consonance with the pleas taken by the respondent and as such I would avoid repetition. Copy of the order *vide* which services of the workman were terminated is Ex. MW-1/A. The workman appeared as WW-I and made a statement completely in accord with the allegations contained in the statement claim. So, I would not bear repetition.

9. The only umbrage taken on behalf of the respondent was that the workman committed theft of one tyre during the course of his employment regarding which his explanation was sought, copy of which is mark "Y" and after enquiry his services were dispensed with. Copy of the enquiry report is Ex. MW-1/I. He admitted at the Bar that no domestic enquiry was held against the workman and only preliminary enquiry was held, reference of which was made by him. So in a way, there was no proper and valid domestic enquiry against the workman. Further more the order of termination is innocuous in nature. The same reads as under:—

"The services of Shri Prithvi Singh Helper (Daily Wages) are hereby discontinued with immediate effect being no longer required".

(Sd)...

General Manager,  
Haryana Roadways, Jind.

The said order is dated 22nd September, 1981. The law is settled that a Court is competent to behind the order of termination how-so-ever innocuously worded the same may be. The main factor which weighed in the mind of the General Manager, Haryana Roadways Jind, in dispensing with the services of the workman was that he had committed a theft of one tyre during the course of his employment but even then no valid domestic enquiry was held. Only a preliminary enquiry was held during course of which, the workman was not given any chance of defence. So in a way, no enquiry was held against the workman. The other point raised on behalf of the respondent was, since the workman was employed on daily wages and his employment was for a fixed period (because the same was extended periodically for a certain period) so provisions of section 25-F of the Industrial Disputes Act, 1947 are not attracted in this case. In my opinion, the learned Legal Adviser of the respondent roadways was not on sound footing in raising this contention. In that behalf reference can be made 1976 Lab. I. C. 1766 M/s Hindustan Steel Ltd. Vs. Presiding Officer, Labour Court Orissa and another. In this authority their Lordships of the Hon'ble Supreme Court of India held that termination of service by running out of time stipulated in the contract of service amounts to retrenchment and non compliance of section 25-F (b) renders retrenchment illegally. In the present case even there is no contract of service as such, because services of the workman were extended from time to time by the General Manager, Haryana Roadways, Jind. The said extension of service was unilateral only and the said extension was not given with the consent of the workman. So, I find that while terminating the services of the workman, the respondent gave a complete go-bye to the provisions of section 25-F of the Industrial Disputes Act, 1947 and as such the order of termination was illegal and void *ab initio*. So the workman is ordered to be reinstated with continuity of service and full back wages and as such this issue is answered in favour of the workman.

10. In view of my findings on issue No. 1, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to costs.

Dated: 1st October, 1984.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Endst. No. 153/82/3477 Dated 8th November, 1984.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court Rohtak.